PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

OF APPEALS.[1]

Unless otherwise provided, no appeal to lie.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order requiring security for keeping the peace or for good behaviour.

[2][**406.** Any person who has been ordered under section 118 to give security for keeping the peace or for good behaviour may appeal against such order—

(*a*) if made by a Presidency Magistrate, to the High Court ;

(*b*) if made by any other Magistrate, to the Court of Session :

[3]* * * * * *

Provided, [4]that nothing in this section shall apply to persons the proceedings against whom are laid before a Session Judge in accordance with the provisions of sub-section (*2*) or sub-section (*3A*) of section 123.]

Appeal from direction made by District Magistrate to make further inquiry into proceedings in which an order of release or discharge has been made under section 119.

[5][**406AA.** Any person aggrieved by a direction made by a District Magistrate under sub-section (*2*) of section 436 requiring any Sub-Divisional Magistrate or any other Executive Magistrate subordinate to him to make further inquiry into any proceedings in which an order of release or discharge has been made by him under section 119 may appeal against such direction to the Court of Session.]

Appeal from order refusing to accept or rejecting a surety.

[6][**406A.** Any person aggrieved by an order refusing to accept or rejecting a surety under section 122 may appeal against such order,—

(*a*) if made by a Presidency Magistrate, to the High Court ;

(*b*) if made by the District Magistrate, to the Court of Session ; or

(*c*) if made by a Magistrate other than the District Magistrate, to the District Magistrate.]

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[1] For periods of limitation, *see* the Indian Limitation Act, 1908 (9 of 1908), s. 3 and Sch. I second division.

[2] Substituted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 109, for the original s. 406.

[3] The first proviso was omitted by Act 26 of 1955, s. 80(*a*).

[4] The word "further" was omitted, *ibid.*, s. 80(*b*).

[5] This section was inserted by Bom. of 1955, s. 4.

[6] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 110.

Transfer of appeals to Additional District Magistrates.

[1][**406B.** The District Magistrate may transfer any appeal presented to him under section 406 or 406A to an Additional District Magistrate, and such Additional District Magistrate may hear and dispose of the appeal.]

407. [*Appeal from sentence of Magistrate of the second or third class.*] *Omitted by Act 26 of 1955, s. 81.*

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or any other Magistrate or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by any Magistrate may appeal to the Court of Session :

Provided as follows :—

* * * *

(*b*) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, the appeal of all or any of the accused convicted at such trial shall lie to the High Court ;

(*c*) when any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code, the appeal shall lie to the High Court.

Appeal from sentence of Assistant Sessions Judge or any Magistrate.

[2][**408.** Any person convicted on a trial held by an Assistant Sessions Judge or a Judicial Magistrate or any person sentenced under section 349 or in respect of whom an order has been made or a sentence has been passed under section 380 by a Judicial Magistrate may appeal to the Court of Session :

Provided as follows :—

(*1*) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes any sentence of imprisonment for a term exceeding four years, the appeal of all or any of the accused convicted at such trial shall lie to the High Court ;

(*2*) when any person is convicted by a Magistrate of an offence under section 124A of the Indian Penal Code, the appeal shall lie to the High Court.] XLV of 1860.

Appeals to Courts of Session how heard.

[3][**409.** (*1*) Subject to the provisions of this section, an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge or an Assistant Sessions Judge :

Provided that no such appeal shall be heard by an Assistant Sessions Judge unless the appeal is of a person convicted on a trial held by any Magistrate of second or third class.

(*2*) An Additional Sessions Judge or an Assistant Sessions Judge shall hear only such appeals as the State Government may, by general or special order, direct or as the Sessions Judge of the division may make over to him.]

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[1] This section was inserted by Bom. 8 of 1954, s. 2., Schedule.

[2] This section was substituted by Bom. 39 of 1955, s. 5.

[3] Substituted by Act 26 of 1955, s. 83, for the original section.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional Session Judge, may appeal to the High Court. Appeal from sentence of Court of Session.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court, if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees. Appeal from sentence of Presidency Magistrate.

[1][**411A.** (*1*) [2]* * * * * *

Any person covicted on a trial held by a High Court in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in section 418 or section 423, sub-section (*2*), or [3][in the Letters Patent or law by which the High Court is constituted or continued], appeal to the High Court— Appeal from sentence of High Court.

(*a*) against the coviction on any ground of appeal which involves a matter of law only;

(*b*) with the leave of the appellate Court or upon the certificate of the judge who tried the case that it is a fit case for appeal, against the conviction on any ground of appeal which involves a matter of fact only, or a matter of mixed law and fact, or any other ground which appears to the appellate Court, to be a sufficient ground of appeal; and

(*c*) with the leave of the appellate Court, against the sentence passed unless the sentence is one fixed by law.

(*2*) Notwithstanding anything contained in section 417, the [4][State] Government may direct the Public Prosecutor to present an appeal to the High Court from any order of acquittal passed by the High Court in the exercise of its original criminal jurisdiction, and such appeal may, notwithstanding anything contained in section 418, or section 423, sub-section (*2*) or [3][in the Letters Patent or law by which the High Court is constituted or continued], but subject to the restrictions imposed by clause (*b*) and clause (*c*) of sub-section (*1*) of this section on an appeal against a conviction, lie on a matter of fact as well as a matter of law.

(*3*) Notwithstanding anything elsewhere contained in any Act or Regulation, an appeal under this section shall be heard by a Division Court of the High Court composed of not less than two judges, being judges other than the judge or judges by whom the original trial was held; and if the constitution of such a Division Court is impracticable, the High Court shall report the circumstances to the [4][State] Government which shall take action with a view to the transfer of the appeal under section 527 to another High Court.

(*4*) Subject to such rules as may from time to time be made by [5][the Supreme Court] in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to [5][the Supreme Court] from any order made on appeal under sub-section (*1*) by a Division Court of the High Court in respect of which order the High Court [6][certifies that the case] is a fit one for such appeal.]

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[1] Inserted by the Criminal Procedure Amendment Act, 1943 (26 of 1943), s. 2.
[2] The words "Without prejudice to the provisions of section 449" were omitted by the A. O. 1950.
[3] Substituted by Act 1 of 1951, s. 19, for "in the Letters Patent of any High Court".
[4] Substituted by the A. O. 1950 for "Provincial".
[5] Substituted, *ibid.*, for "His Majesty in Council".
[6] Substituted, *ibid.*, for "declares that the matter".

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by [1][a High Court,] a Court of Session or any Presidency Magistrate or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained there shall be no appeal by a convicted person in cases in which a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained there shall be no appeal by a convicted person in cases in which [2][a High Court [3][*or the Court of Session for Greater Bombay*] passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which] [4][*any other Court of Session*] [5]* * * passes a sentence of imprisonment not exceeding one month only, or [6][in which a court of Session [7][*other than that for Greater Bombay*] or [8][*a*] Magistrate of the first class passes a sentence] of fine not exceeding fifty rupees only [9]* * * *.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

No appeal from certain summary convictions.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence [10]* * of fine not exceeding two hundred rupees only [11]*

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 [12][by which any punishment therein mentioned is combined with any other punishment], but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

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[1] Inserted by s. 3 of the Criminal Procedure Amendment Act, 1943 (26 of 1943).
[2] Inserted by s. 4, *ibid.*
[3] Inserted by Bom. 32 of 1948, s. 21.
[4] Substituted by s. 21, *ibid.*, for "a Court of Session".
[5] The words "or the District Magistrate or other Magistrate of the first class" rep. by the Criminal Law Amendment Act, 1923 (12 of 1923), s. 24.
[6] Inserted by s. 24, *ibid.*
[7] Inserted by Bom. 32 of 1948, s. 21.
[8] Substituted by Bom. 23 of 1951, s. 2 and Sch. Pt. I, for "District Magistrate or other".
[9] The words "or of whipping only" repealed by Act 12 of 1923, s. 24.
[10] The words "of imprisonment not exceeding three months only, or" rep. by the Criminal Law Amendment Act, 1923 (12 of 1923), s. 25.
[11] The words "or of whipping only" rep. by s. 25, *ibid.*
[12] Substituted by the Repealing and Amending Act, 1945 (6 of 1945), s. 3 and Sch. II, for "by which any two or more of the punishments therein mentioned are combined".

Explanation.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Special right of appeal in certain cases.

[1][**415A.** Notwithstanding anything contained in this Chapter, when more persons than one are convicted in one trial, and an appealable judgment or order has been passed in respect of any of such persons, all or any of the persons convicted at such trial shall have a right of appeal.]

416. [*Saving of sentences on European British subjects.*] *Rep. by the Criminal Law Amendment Act, 1923 (XII of 1923), s. 26.*

Appeal in case of acquittal.

[2][**417.** (*1*) Subject to the provisions of sub-section (*5*), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(*2*) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (XXXV of 1946), the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

(*3*) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(*4*) No application under sub-section (*3*) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

(*5*) If, in any case, the application under sub-section (*3*) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (*1*).

Appeal on what matters admissible.

418. [3][(*1*)] An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

[4][(*2*) Notwithstanding anything contained in sub-section (*1*) or in section 423, sub-section (*2*), when, in the case of a trial by jury, any person is sentenced to death, any other person convicted in the same trial with the person so sentenced may appeal on a matter of fact as well as a matter of law.]

Explanation.—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgement or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

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[1] Inserted by the Code of Criminal Procedure (Amendment) Act, 1923 (18 of 1923), s. 114.
[2] Substituted by Act 26 of 1955, s. 84, for the original section.
[3] S. 418 was renumbered as sub-section (*1*) of that section by Act 18 of 1923, s. 115.
[4] Inserted by s. 115, *ibid.*

Summary dismissal of appeal.

421. (*1*) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(*2*) Before dismissing an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notice of appeal.

422. If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the [1][[2][State] Government] may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under [3][section 411A, sub-section (*2*), or section 417], the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal.

423. (*1*) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under [3][section 411A, sub-section (*2*), or section 417], the accused, if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction, (*1*) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (*2*) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (*3*) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (*3*), not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) make any amendment or any consequential or incidental order that may be just or proper.

[4][(*1A*) Where an appeal from a conviction lies to the High Court, it may enhance the sentence notwithstanding anything inconsistent therewith contained in clause (*b*) of sub-section (*1*):

Provided that the sentence shall not be so enhanced, unless the accused has had an opportunity of showing cause against such enhancement.]

(*2*) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

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[1] Substituted by the A. O. 1937 for "L. G.".
[2] Substituted by the A. O. 1950 for "Provincial".
[3] Substituted by the Criminal Procedure Amendment Act, 1943 (26 of 1943), s. 5 for "section 417".
[4] Inserted by Act 26 of 1955, s. 85.

Judgments of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court.

425. (*1*) Whenever a case is decided on appeal by the High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

(*2*) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending appeal. Release of appellant on bail.

426. (*1*) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail or on his own bond.

(*2*) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

[1][(*2A*) When any person other than a person [2][convicted of a non-bailable offence] is sentenced to imprisonment by a Court, and an appeal lies from that sentence, the Court may, if the convicted person satisfies the Court that he intends to present an appeal, order that he be released on bail for a period sufficient in the opinion of the Court to enable him to present the appeal and obtain the orders of the Appellate Court under sub-section (*1*) and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.]

[3][(*2B*) Where a High Court is satisfied that a convicted person has been granted special leave to appeal to the Supreme Court against any sentence which the High Court has imposed or maintained, the High Court may, if it so thinks fit, order that pending the appeal the sentence or order appealed against be suspended and also, if such person is in confinement, that he be released on bail.]

(*3*) When the appellant is ultimately sentenced to imprisonment, [4]* or [5][imprisonment for life] the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under [6][section 411A, sub-section (*2*), or section 417], the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

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[1] Inserted by the Code of Criminal Procedure (Amendment) Act, 1945 (2 of 1945), s. 3.

[2] Substituted by Act 26 of 1955, s. 86 (*a*), for "accused of a non-bailable offence".

[3] Substituted by the A. O. 1950 for the original sub-section (*2A*) which was inserted by Act 4 of 1946, s. 2.

[4] The words "penal servitude" were omitted by Act I of 1951, s. 20.

[5] Substituted by Act 26 of 1955, s. 86 (*b*), for "transportation".

[6] Substituted by the Criminal Procedure Amendment Act, 1943 (26 of 1943), s. 5, for "section 417".

Appellate Court may take further evidence or direct it to be taken.

428. (*1*) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

428. (*1*) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken [1][*by a Judicial Magistrate*] or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(*2*) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(*3*) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors [2]* *.

(*4*) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.

Procedure where Judges of Court of Appeal are equally divided.

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such hearing (if any) as he thinks fit shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

431. Every appeal under [3][section 411A, sub-section (*2*), or section 417] shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.

CHAPTER XXXII.

Of Reference and Revision.

Reference to High Court.

[4][**432.** (*1*) Where any court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that court is subordinate or by the Supreme Court, the court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court.

Explanation.—In this section, "Regulation" means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

(*2*) A presidency magistrate may, if he thinks fit in any case pending before him to which the provisions of sub-section (*1*) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

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[1] Substituted by Bom. 23 of 1951, s. 2 and Sch. Pt. I, for "by a Magistrate".
[2] The words "or assessors" by Act 26 of 1955, s. 87.
[3] Substituted by the Criminal Procedure Amendment Act, 1943 (26 of 1943), s. 5, for "section 417".
[4] Substituted by Act 24 of 1951, s. 3, for the original s. 432.